

STATE OF NEW JERSEY
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the)
Commissioner of Banking and)
Insurance, State of New)
Jersey, to fine, suspend,)
and/or revoke the insurance)
producer licenses of Andrew)
Tepedino, Reference No.)
0235071, and Michael Tepedino)
& Sons Insurance Agency,)
Reference No. 1004734)

FIRST AMENDED
ORDER TO SHOW CAUSE

TO: Andrew Tepedino
6811 Fulton Ave.
Ventnor City, NJ 08406

Andrew Tepedino
1437 2nd Avenue
New York, NY 10021

Michael Tepedino & Sons Insurance Agency
2408 Cedarbridge Road
Northfield, NJ 08225

This matter having been opened by the Commissioner of Banking and Insurance ("Commissioner"), State of New Jersey, upon information that Andrew Tepedino ("A. Tepedino"), and Michael Tepedino & Sons Insurance Agency ("M. Tepedino & Sons") (collectively, "Respondents"), may have violated various provisions of the insurance laws of the State of New Jersey; and

WHEREAS, A. Tepedino is currently licensed as a resident individual insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32; and

WHEREAS, M. Tepedino & Sons is currently a licensed resident business entity insurance producer in the State of New Jersey pursuant to N.J.S.A. 17:22A-32; and

WHEREAS, A. Tepedino was employed by M. Tepedino & Sons while committing the actions or omissions alleged in this First Amended Order to Show Cause; and

WHEREAS, Respondents are subject to the provisions of the New Jersey Insurance Producer Licensing Act of 2001, N.J.S.A. 17:22A-26 et seq. ("Producer Act"), the Producer Licensing regulations, N.J.A.C. 11:17-1.1 et seq., the Insurance Producer Standards of Conduct, N.J.A.C. 11:17A-1.1 et seq., the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1 et seq. ("Fraud Act"), and the New Jersey Trade Practices Act, N.J.S.A. 17B:30-1 et seq. ("Trade Practices Act"); and

WHEREAS, on April 13, 2017, the Commissioner issued Order to Show Cause, Order No. E17-23, seeking to fine, suspend, and/or revoke the insurance producer license of A. Tepedino; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(2), an insurance producer shall not violate any insurance law, regulation, subpoena, or order of the Commissioner or of another state's insurance regulator; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(5), an insurance producer shall not intentionally misrepresent the terms of an

actual or proposed insurance contract, policy, or application for insurance; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(7), an insurance producer shall not admit or be found to have committed any insurance unfair trade practice or fraud; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(8), an insurance producer shall not use fraudulent, coercive, or dishonest practices, or demonstrate incompetence, untrustworthiness, or financial irresponsibility in the conduct of insurance business in this State or elsewhere; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(10), an insurance producer shall not forge another's name to an application for insurance or to any document related to an insurance transaction; and

WHEREAS, pursuant to N.J.S.A. 17:22A-40a(16), an insurance producer shall not commit any fraudulent act; and

WHEREAS, pursuant to N.J.S.A. 17B:30-6, no person shall make any misleading misrepresentations or incomplete or fraudulent comparison of any insurance policies or annuity contracts or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, or convert any insurance policy or annuity contract, or to take out a policy of insurance or annuity contract with another insurer; and

WHEREAS, pursuant to N.J.A.C. 11:4-2.8(a)3, an insurance producer shall not intentionally record an incorrect answer in connection with the replacement of an annuity; and

WHEREAS, pursuant to N.J.S.A. 17B:25-37d(1) and N.J.A.C. 11:4-59.3(a)1, an insurance producer, agent, representative or member of a fraternal benefit society not required to be licensed as an insurance producer pursuant to N.J.S.A. 17:44B-32, or an insurer shall provide a consumer who applies for an annuity a copy of a buyer's guide regarding the sale of annuities no later than five business days after receipt of the application; and

WHEREAS, pursuant to N.J.A.C. 11:4-59.5 and N.J.S.A. 17B:25-42a, an insurance producer's failure to provide a consumer a copy of a buyer's guide within five business days after receipt of the application for an annuity constitutes a violation of the Trade Practices Act; and

WHEREAS, pursuant to N.J.A.C. 11:17A-2.8, an insurance producer shall not make any misleading representations or incomplete or fraudulent comparison of any insurance policies or annuity contracts or insurers for the purpose of inducing, or intending to induce, any person to lapse, forfeit, surrender, terminate, retain or convert any insurance policy or annuity contract, or to take out an insurance policy or annuity contract with another insurer; and

WHEREAS, pursuant to N.J.S.A. 17:22A-45c, any person violating any provisions of the Producer Act shall be liable for a penalty up to \$5,000.00 for the first offense and not exceeding \$10,000.00 for each subsequent offense; additionally the Commissioner or the court, as the case may be, may order restitution of moneys owed any person and reimbursement of the costs of investigation and prosecution, as appropriate; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5a(2), the Commissioner is authorized to levy a civil administrative penalty and order restitution against those who violate the provisions of the Fraud Act; and

WHEREAS, pursuant to N.J.S.A. 17:33A-4a(4)b, a person violates the Fraud Act when he prepares or makes any written or oral statement, intended to be presented to any insurance company or producer for the purpose of obtaining an insurance policy, knowing that the statement contains any false or misleading information concerning any fact or thing material to an insurance application or contract; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5c, the Commissioner is authorized to assess, against any person who violates the Fraud Act, a civil and administrative penalty of up to \$5,000 for the first violation, \$10,000 for the second violation, and \$15,000 for each subsequent violation; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5c, the Commissioner is further authorized to assess against a person who violates the Fraud Act, restitution, costs and attorneys' fees; and

WHEREAS, pursuant to N.J.S.A. 17:33A-5.1, in addition to any other penalty, fine or charge imposed pursuant to law, a person who is found in any legal proceeding to have committed insurance fraud shall be subject to a \$1,000 surcharge; and

COUNT 1

IT APPEARING that prior to September 18, 2012, J.S. owned two Pruco Life Insurance Company ("Pruco") annuity contracts; and

IT FURTHER APPEARING that in September 2012, Respondents urged J.S. to surrender his two Pruco annuity contracts; and

IT FURTHER APPEARING that in September 2012, Respondents urged J.S. to take the funds he would receive from the surrender of his two Pruco annuity contracts and invest them into two Midland National Life Insurance Company ("Midland") annuity contracts; and

IT FURTHER APPEARING that J.S. did surrender his two Pruco annuity contracts; and

IT FURTHER APPEARING that in the course of making these recommendations to J.S., Respondents made misleading misrepresentations or incomplete or fraudulent comparisons regarding the Pruco and Midland annuity contracts intended to

induce J.S. to surrender his Pruco annuity contracts and to purchase Midland annuity contracts, in violation of N.J.S.A. 17:22A-40a(2), (5), and (7), N.J.A.C. 11:17A-2.8, and N.J.S.A. 17B:30-6; and

COUNT 2

IT FURTHER APPEARING that on or about September 18, 2012, Respondents completed and submitted two Fixed Annuity Applications, No. 7804 ("Application 7804") and No. 7805 ("Application 7805") (collectively with Application 7804, "Applications"), to Midland on behalf of J.S.; and

IT FURTHER APPEARING that on the Applications, Respondents misrepresented the address, birthday, and phone number of J.S.; and

IT FURTHER APPEARING that on the Applications, Respondents listed J.S. as being approximately ten years younger than he actually was; and

IT FURTHER APPEARING that under the "Agent's Certification" section of the Applications, Respondents checked "No" in response to "Does the applicant have any existing or pending life insurance or annuity contracts?"; and

IT FURTHER APPEARING that under the "Agent's Certification" section of the Applications, Respondents checked "No" in response to "Will this annuity replace or change any existing life insurance or annuity contracts?"; and

IT FURTHER APPEARING that the payments made to Midland in connection with the Applications were comprised solely of proceeds originating from the surrender of the two Pruco annuity contracts of J.S.; and

IT FURTHER APPEARING that by misrepresenting the address, birthday, and phone number of J.S., and by falsely certifying on the Applications that J.S. did not have an existing life insurance or annuity contract or that the annuity contract would not replace an existing life insurance policy or annuity contract, Respondents committed fraudulent acts in violation of N.J.S.A. 17:22A-40a(2), (7), (8), and (16); and

IT FURTHER APPEARING that by misrepresenting the address, birthday, and phone number of J.S., and by falsely certifying on the Applications that J.S. did not have an existing life insurance or annuity contract or that the annuity contract would not replace an existing life insurance policy or annuity contract, Respondents intentionally misrepresented the terms of an insurance application and intentionally recorded incorrect answers in connection with the replacement of an annuity in violation of N.J.S.A. 17:22A-40a(2) and (5), and N.J.A.C. 11:4-2.8(a)3; and

COUNT 3

IT FURTHER APPEARING that in connection with the Applications, Respondents completed and submitted a Deferred

Annuity Suitability Form, No. 7804 ("Suitability Form 7804") and No. 7805 ("Suitability Form 7805") (collectively with Suitability Form 7804, "Suitability Forms"); and

IT FURTHER APPEARING that on Suitability Form 7804, Respondents misrepresented the monthly household income and expenses, total liquid and non-liquid assets, household liabilities, and total household net worth of J.S.; and

IT FURTHER APPEARING that on Suitability Form 7805, Respondents misrepresented the total liquid and non-liquid assets, household liabilities, and total household net worth of J.S.; and

IT FURTHER APPEARING that on the Suitability Forms, Respondents answered "No" in response to "Excluding this transaction, have you exchanged or replaced any other life policy or annuity contract within the last 36 months?"; and

IT FURTHER APPEARING that on the Suitability Forms, Respondents answered "Checking/Savings" in response to "Source of Funds to purchase this annuity"; and

IT FURTHER APPEARING that by misrepresenting the financial status of J.S. on the Suitability Forms, Respondents acted in violation of N.J.S.A. 17:22A-40a(2), (5), (8), and (16); and

IT FURTHER APPEARING that by misrepresenting the financial status of J.S. on the Suitability Forms, Respondents intentionally recorded an incorrect answer in connection with

the replacement of an annuity contract, in violation of N.J.S.A. 17B:30-6 and N.J.A.C. 11:4-2.8(a)3; and

COUNT 4

IT FURTHER APPEARING that Respondents forged the signature of J.S. on the Suitability Forms, in violation of N.J.S.A. 17:22A-40a(2) and (10); and

COUNT 5

IT FURTHER APPEARING that after receiving the Applications and Suitability Forms, Midland determined that neither J.S. nor Respondents had completed the monthly household income and expenses portions of Suitability Form 7805; and

IT FURTHER APPEARING that Midland requested the completion of the monthly household income and expenses portions of Suitability Form 7805; and

IT FURTHER APPEARING that on or about September 24, 2012, Respondents completed and submitted a revised copy of Suitability Form 7805 (the "September 24, 2012 Submission") that misrepresented the monthly household income and expenses of J.S., and falsely stated that J.S. had sufficient funds available for monthly living expenses when, in fact, J.S. routinely withdrew funds from his previous annuity contracts in order to cover living expenses; and

IT FURTHER APPEARING that by misrepresenting the financial status of J.S. on the September 24, 2012 Submission, Respondents

committed a fraudulent act in violation of N.J.S.A. 17:22A-40a(2), (5), (8), and (16); and

IT FURTHER APPEARING that by misrepresenting the financial status of J.S. on the September 24, 2012 submission, Respondents intentionally recorded an incorrect answer in connection with the replacement of an annuity contract in violation of N.J.S.A. 17B:30-6 and N.J.A.C. 11:4-2.8(a)3; and

COUNT 6

IT FURTHER APPEARING that after receiving the Applications and Suitability Forms, Midland determined that the funds being used to purchase the Midland annuity contracts originated from recently surrendered Pruco annuity contracts of J.S.; and

IT FURTHER APPEARING that Midland requested information regarding any fees incurred by J.S. in connection with the surrender of his Pruco annuity contracts; and

IT FURTHER APPEARING that on or about September 26, 2012, Respondents submitted revised copies of the Suitability Forms that stated that the Pruco annuity contracts of J.S. had been issued on August 17, 1995; and

IT FURTHER APPEARING that Respondents further stated that J.S. had not incurred any fees in connection with the surrender of his Pruco annuity contracts; and

IT FURTHER APPEARING that the Pruco annuity contracts of J.S. were only a year old and were not purchased in 1995, as purported by Respondents; and

IT FURTHER APPEARING that J.S. paid significant surrender charges in connection with the surrender of his Pruco annuity contracts; and

IT FURTHER APPEARING that by misrepresenting the issuance date of the Pruco annuity contracts of J.S. and the size of the surrender charges paid by J.S. in connection with the surrender of those annuity contracts, Respondents committed a fraudulent act in violation of N.J.S.A. 17:22A-40a(2), (5), (8), and (16); and

IT FURTHER APPEARING that by misrepresenting the issuance date of the Pruco annuity contracts of J.S. and the size of the surrender charges paid by J.S. in connection with the surrender of those annuity contracts, Respondents intentionally recorded an incorrect answer in connection with the replacement of an annuity contract in violation of N.J.S.A. 17B:30-6 and N.J.A.C. 11:4-2.8(a)3; and

COUNT 7

IT FURTHER APPEARING that Respondents did not provide J.S. with a buyer's guide within five business days of the receipt of his Applications, in violation of N.J.S.A. 17B:25-37d(1),

N.J.S.A. 17B:25-42a, N.J.S.A. 17B:30-1 et seq., and N.J.A.C. 11:4-59.3 and 59.5; and

COUNT 8

IT FURTHER APPEARING that by misrepresenting the address, birthday, and phone number of J.S., and by falsely certifying on the Applications that J.S. did not have an existing life insurance or annuity contract or that the annuity contract would replace an existing life insurance policy or annuity contract, Respondents prepared or made written or oral statements intended to be presented to an insurance company for the purpose of obtaining an insurance policy knowing that the statements contained false or misleading information concerning a fact or thing material to an insurance application or contract in violation of N.J.S.A. 17:33A-4a(4)(b); and

IT FURTHER APPEARING that by misrepresenting the financial status of J.S. on the Suitability Forms, Respondents prepared or made written or oral statements intended to be presented to an insurance company for the purpose of obtaining an insurance policy knowing that the statements contained false or misleading information concerning a fact or thing material to an insurance application or contract in violation of N.J.S.A. 17:33A-4a(4)(b); and

IT FURTHER APPEARING that Respondents, by forging the signature of J.S. on the Suitability Forms, prepared or made

written or oral statements intended to be presented to an insurance company for the purpose of obtaining an insurance policy knowing that the statements contained false or misleading information concerning a fact or thing material to an insurance application or contract in violation of N.J.S.A. 17:33A-4a(4)(b); and

IT FURTHER APPEARING that by misrepresenting the financial status of J.S. on the September 24, 2012 Submission, Respondents prepared or made written or oral statements intended to be presented to an insurance company for the purpose of obtaining an insurance policy knowing that the statements contained false or misleading information concerning a fact or thing material to an insurance application or contract in violation of N.J.S.A. 17:33A-4a(4)(b); and

IT FURTHER APPEARING that by misrepresenting the issuance date of the Pruco annuity contracts of J.S. and the size of the fees paid by J.S. in connection with the surrender of those annuity contracts, Respondents prepared or made written or oral statements intended to be presented to an insurance company for the purpose of obtaining an insurance policy knowing that the statements contained false or misleading information concerning a fact or thing material to an insurance application or contract in violation of N.J.S.A. 17:33A-4a(4)(b);

NOW, THEREFORE, IT IS on this *6th* day of *July*, 2017

ORDERED that Respondents shall appear and show cause why the New Jersey insurance producer licenses issued to them shall not be suspended or revoked by the Commissioner and why they should not be fined up to \$5,000.00 for the first violation and not more than \$10,000.00 for the second and each subsequent violation of the Producer Act, pursuant to N.J.S.A. 17:22A-40a and N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED that Respondents appear and show cause why they should not be subject to restitution and reimbursement of the costs of investigation and prosecution, pursuant to N.J.S.A. 17:22A-45c; and

IT IS FURTHER ORDERED that Respondents shall appear and show cause why the Commissioner should not assess fines up to \$5,000.00 for the first violation, \$10,000 for the second violation, and \$15,000 for each subsequent violation of the Fraud Act, pursuant to N.J.S.A. 17:33A-5c; and

IT IS FURTHER ORDERED that Respondents shall appear and show cause why they should not be subject to restitution to Midland and others of commissions and fees earned, pursuant to N.J.S.A. 17:33A-5c; and

IT IS FURTHER ORDERED that Respondents shall appear and show cause why they should not be subject to the assessment of costs and attorneys' fees, pursuant to N.J.S.A. 17:33A-5c; and

IT IS FURTHER ORDERED that Respondents shall appear and show cause why they should not be subject to the imposition of a \$1,000.00 surcharge, pursuant to N.J.S.A. 17:33A-5.1; and

IT IS PROVIDED that Respondents have the right to request an administrative hearing, to be represented by counsel or other qualified representative, at their own expense, to take testimony, to call or cross-examine witnesses, to have subpoenas issued, and to present evidence or argument if a hearing is requested; and

IT IS FURTHER PROVIDED that unless a request for a hearing is received within twenty (20) days of the service of this First Amended Order to Show Cause, the right to a hearing in this matter shall be deemed to have been waived by the licensee and the Commissioner shall dispose of this matter in accordance with the law. A hearing may be requested by mailing the request to Virgil Downtin, Chief of Investigations, Department of Banking and Insurance, P.O. Box 329, Trenton, New Jersey 08625, or by faxing the hearing request to the Department at (609) 292-5337. A copy of the request for a hearing shall also be sent to Deputy Attorney General Jeffrey S. Posta at fax number (609) 777-3503. The request for a hearing shall contain:

- (A) The licensee's name, address, and daytime telephone number;
- (B) A statement referring to each charge alleged in this First Amended Order to Show Cause and identifying any defense intended to be asserted in response to each charge. Where

the defense relies on facts not contained in this First Amended Order to Show Cause, those specific facts must be stated;

- (C) A specific admission or denial of each fact alleged in this First Amended Order to Show Cause. Where the Respondents have no specific knowledge regarding a fact alleged in this First Amended Order to Show Cause, a statement to that effect must be contained in the hearing request. Allegations of this First Amended Order to Show Cause not answered in the manner set forth above shall be deemed to have been admitted; and
- (D) A statement requesting a hearing.



Peter L. Hartt
Director of Insurance